KESATUAN PEKERJA-PEKERJA MALAYSIA SHIPYARD & ENGINEERING SDN. BHD.

v.

MALAYSIA SHIPYARD & ENGINEERING SDN. BHD.

HIGH COURT MALAYA, JOHORE BAHRU
LC VOHRAH J
[ORIGINATING MOTION NO. 32-57 OF 1987]
17 NOVEMBER 1988

LABOUR LAW: *Intervention of High Court in case of jurisdictional error by Industrial Court - Non-compliance of collective agreement - Whether or not Industrial Court had acted within jurisdiction - Whether or not Industrial Court had done or failed to do something in the course of enquiry which nullifies its decision.*

A retrenchment notice dated 4 November 1986 was sent by the respondent company to the applicant union purportedly under Clause 47.2 of a collective agreement giving 45 days' notice of an intended retrenchment exercise of the respondent company's employees. Correspondence and negotiations took place but the parties failed to arrive at a satisfactory conclusion of their negotiations. Retrenchment letters dated 27 February 1987 were then sent out to 342 workers.

A complaint was filed by the applicant union to the Industrial Court alleging breach of the collective agreement. Nevertheless, the Industrial Court handed down an award no. 111 of 1987. Now the applicant union sought the Court's intervention to have the Industrial Court's decision nullified. It is conceded by the applicant union that the Industrial Court had acquired jurisdiction to hear the complaint but contends that the respondent company had not complied with the collective agreement, firstly, by failing to serve a proper notice of retrenchment in breach of cl. 47.2 and secondly, by carrying out a lock-out in breach of cl. 2.7. It is argued that when the Industrial Court decided not to rule on whether there had been lock-out it had in fact refused to assume jurisdiction over a matter which it was required to take cognizance of so that the High Court is empowered to quash its award on this score.

Held:

[1] The High Court can only intervene and grant the order prayed for if the Industrial Court has erred as to some matters affecting its jurisdiction if the Industrial Court had acted without jurisdiction or if it has done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity.

[2] The respondent company complied with cl. 47.2 in serving its retrenchment notice and that the retrenchment notice remained valid even after the 45 day period because negotiations were carried on without delay as an on-going process and that there was no requirement for the retrenchment notice to be renewed.

[3] In relation to cl. 2.7, it is clear that the Industrial Court had accepted as a fact that the workers had been paid for the 2 days and decided that even if there had been a lock-out there was no relief it could grant and that at most it would constitute a statutory offence under s. 32(1). The Court was of the view that the Industrial Court did consider specifically the issue of lock-out and gave its reason why it could not pronounce on it. The Industrial Court did not therefore decline or abandon jurisdiction on this score.

[Application dismissed with no order as to costs.]

Cases referred to:

Mak Sik Kwong v. Minister of Home Affairs, Malaysia (No. 2) [1975] 2 MLJ 175

South East Asia Fire Bricks Sdn. Bhd. v. Non-Metallic Mineral Products Manufactures Employees Union & Ors. [1980] 2 MLJ 165

Inchape Malaysia Holdings Bhd. v. R.B. Gray & Anor. [1985] CLJ (Rep) 132

Legislation referred to:

Industrial Relations Act 1967, ss. 32(1), 56(1), 60

For the applicant - G.S. Nijar; M/s. Nijar & Nijar

For the respondent - V.T. Nathan; M/s. Shearn Delamore & Co.

JUDGMENT

LC Vohrah J:

With the adjournments that had to be granted in these proceedings and the consequent delay in hearing the full arguments of both Counsel, I promised I would give an early decision in this matter and I do so now.

I have considered each and every authority that has been put to me and it is clear on the authorities binding on this Court, particularly *Mak Sik Kwong v. Minister of Home Affaris, Malaysia* (No. 2) [1975] MLJ 175 right column B; *South East Asia Fire Bricks Sdn. Bhd. v. Non-Metallic Mineral Products Manufacturer Employees Union & Ors.* [1980] 2 MLJ 165 right column E to p. 29 left column D and *Inchape Malaysia Holdings Bhd. v. R.B. Gray & Anor.* [1985] CLJ (Rep) 132 left column A to F, that the High Court can only intervene and grant the order prayed for if the Industrial Court has erred as to some matter affecting its jurisdiction, that is to say, if the Industrial Court had "acted without jurisdiction or if it has done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity." To consider whether or not the Industrial Court in this case had jurisdiction or had exceeded it, it must be asked whether the Industrial Court in making its award had taken into account matters which it was required to take into account and/or had not based its award on some matter which under the Act it had no right to take into account. As I see it, all that the Industrial Court had to do in this matter was to consider whether the applicant union had shown that there was a breach of the collective agreement as embodied in Award No. 122 of 1985. The complaint that was properly taken cognizance of by the Industrial Court under s. 56(1) of the Industrial Relations Act 1967 was that there was non-compliance or breach of the collective agreement in respect of Clauses 47.2 and 2.7. It is conceded by Mr. Nijar for the union that the Industrial Court had acquired jurisdiction to hear the complaint but Mr. Nijar contends that the respondent company had not complied with the collective agreement on two counts, firstly, by failing to serve a proper notice of retrenchment in breach of cl. 47.2 and, secondly, by carrying out a lock-out in breach of Clause 2.7. As to the first count, Mr. Nijar argues that although the notice of retrenchment had been issued it had been spent upon agreement being reached on 20 and 21 January 1987 at the Industrial Relations Office in Johore Bahru that the workers would not be retrenched and accordingly if it was intended to retrench the workers after this agreement a further notice should have been given. As to the second count, Mr. Nijar argues that when the Industrial Court decided not to rule on whether there had been a lock-out it had in fact refused to assume jurisdiction over a matter which it was required under s. 56 to take cognizance of so that the High Court is empowered to quash its award on this score.

The record shows that the retrenchment notice dated 4 November 1986 (ZBHA6) was sent by the company to the union purportedly under Clauses 47.2 giving 45 days' notice from the date of the notice of an intended retrenchment exercise of the company's employees and that correspondence and negotiations were entered into between the parties which met several times starting with the meeting on 20 January 1987 and ending with that on 18 February 1987 resulting in the joint declaration dated 19 February 1987 (ZBHA10) by both sides announcing their failure to arrive at a satisfactory conclusion of their negotiations followed by the dockyard being closed on two successive days, 28 February and 1 March 1987, when retrenchment letters dated 27 February 1987 were sent to 342 workers.

In my view, the Industrial Court in handing down its Award no. 111 of 1987 did so within jurisdiction and did not commit any jurisdictional error in making the award. It is clear from the award itself (ZBHA5) that the Industrial Court addressed its mind to the issues that were raised before it on the union's complaint that Clauses 47.2 and 2.7 of the collective agreement had not been complied with. The Industrial Court acquired jurisdiction to hear the complaint under s. 56, conducted a hearing, and found for a fact in para. 9 of its award that after the retrenchment notice was issued negotiations had actually been carried out between the two sides but "came to nought" resulting in the joint declaration ZBHA10 whereby both sides announced that they had rescinded the agreement reached at the Industrial Relations Office, Johore Bahru, on 20 and 21 January 1987 and would go back to the position before the agreement; that the company had complied with Clauses 47.2 in serving its retrenchment notice and that the retrenchment notice remained valid even after the 45 day period because negotiations were carried on without delay as an on-going process and that when they were called off on 19 February 1987 individual retrenchment letters were sent 8 days afterwards on 27 February 1987 to 342 employees with cheques of amounts reflecting their retrenchment benefits in accordance with the rules and regulations under the collective agreement; and that there was no requirement for the retrenchment notice to be renewed. It therefore decided that there was no breach of Clause 47.2. Similarly, in the course of the hearing the Industrial Court considered the complaint relating to the alleged breach of Clause 2.7 under para. 6 of its award wherein it is clear that it had accepted as a fact that the workers had paid for the two days 28 February and 1 March 1987 and decided that even if there had been a lock-out there was no relief it could grant and that at most it would constitute a statutory offence under s. 32(1) punishable under s. 60. In my view the Industrial Court did consider specifically the issue of the lock-out and gave its reason why it could not pronounce on it. The Industrial Court did not therefore decline or abandon jurisdiction on this score. I therfore rule that the Industrial Court in making its award did not refuse to assume jurisdiction or act without or in excess of its jurisdiction nor did or fail to do anything in the course of the hearing which rendered its decision a nullity.

I have accordingly to dismiss this application. On the application of Mr. Nijar that no costs be awarded and with no objections from Mr. Kumar appearing on behalf of Mr. Nathan for the company, I make no order as to costs.

Also found at [1989] 1 CLJ 1077